

II. Response to Restriction Requirement

The Examiner restricted the claims of the application into two groups as follows:

Group I: claims 10-27, drawn to a method of delivering an aerosol to the upper airways of a mammal; and

Group II: claims 28-45, drawn to a method of delivering an aerosol to the lungs of a mammal.

Applicants elect Group II, claims 28-45, **with traverse**.

Applicants traverse the restriction requirement on the grounds that the search and examination of the two groups of claims is not unduly burdensome. As noted by the Examiner, all of the claims are classified in Class 424, and the two Groups of claims share a common subclass 45.

The criteria for a proper restriction requirement, according to MPEP § 803, is that the Examiner must establish that the inventions are independent or distinct as claimed *and* that there is a serious burden on the Examiner to examine the entire application. Since it is believed that the search and examination of both Groups of claims is not unduly burdensome upon the Examiner, restriction is not proper and should be withdrawn.

III. Response to Species Election Requirement

Additionally, the Examiner required Applicants to elect a single therapeutic species among those given in claims 19 and 37: analgesics, anti-inflammatory agents, anthelmintics, anti-arrhythmic agents, antibiotics, anticoagulants, antidepressants, antidiabetic agents, antiepileptics, antihistamines, antihypertensive agents, antimuscarinic agents, antimycobacterial agents, antineoplastic agents, immunosuppressants, antithyroid agents, antiviral agents, anxiolytic sedatives, astringents, beta-adrenoceptor blocking agents, blood products and substitutes, cardiac inotropic agents, corticosteroids, cough suppressants, diuretics, dopaminergics, haemostatics, immunological agents, lipid regulating agents, muscle relaxants, parasympathomimetics, parathyroid calcitonin and

biphosphonates, prostaglandins, radio-pharmaceuticals, sex hormones, anti-allergic agents, stimulants, anorectics, sympathomimetics, thyroid agents, vasodilators, and xanthines.

Applicants provisionally elect, with traverse, to prosecute the species of corticosteroids.

37 C.F.R. § 1.141 provides that a reasonable number of species may still be claimed in one application if the other conditions of the rule are met; *i.e.*, provided that the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form or otherwise include all of the limitations of the generic claim. Applicants' claimed invention meets all of the requirements of 37 C.F.R. § 1.141 and, therefore, the species election requirement for the listed respiratory illnesses should be withdrawn.

Finally, Applicants presume that the Examiner will follow the procedures delineated in MPEP 809.02(c).

IV. **Conclusion**

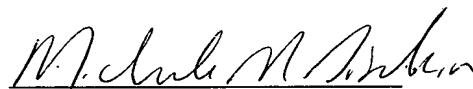
An early favorable action on the merits is awaited.

If there are any fees due in connection with the filing of this Amendment, please charge the fees to our Deposit Account No. 19-0741. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Dated: May 20, 2002

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